

HUMAN RIGHTS COMMISSION

ALS NO.: 11491

RECOMMENDED ORDER AND DECISION

When these motions were first considered in the order entered on March 17, 2003, it appeared that Complainant was ready to participate in this matter. However, she then failed to appear at the status hearing on April 10, 2003, her sixth consecutive absence of this kind, and she did not file any further response to the renewed motions to dismiss as required in the order issued that day. Proof of service of the order of April 10, 2003 on Complainant and the Department of Human Rights was provided by counsel for Respondent Excel. This matter is now ready for disposition.

Statement of the Case

The complaint in this case was filed on Complainant's behalf by the Illinois Department of Human Rights on March 19, 2001. Respondent Excel filed its Motion for Leave to Appear, Answer and to Reset Hearing Date on May 7, 2001. When the latter motion was heard on May 17, 2001, Complainant did not appear and Respondent Excel was given leave to

file a motion to dismiss by no later than June 29, 2001. Respondent Excel then filed an unverified answer on May 25, 2001 followed by a Motion for Summary Judgment (*sic*) on July 2, 2001. Consideration of the Motion for Summary Judgment was delayed because Respondent Excel did not serve it on Respondent Ortiz. Complainant responded to the Motion for Summary Judgment on August 3, 2001 and Respondent Excel's reply was filed on August 6, 2001. The appearance of counsel representing Respondent Ortiz was filed on September 25, 2001 and on October 4, 2001, he indicated that he did not join Respondent Excel in its Motion for Summary Judgment. The verified answer of Respondent Ortiz was then filed on October 19, 2001. The Motion for Summary Judgment was denied in an order entered on October 26, 2001 and a discovery order was entered on November 27, 2001.

Both respondents filed motions to compel on June 28, 2002. These motions were granted on July 23, 2002. Complainant's counsel then filed a Motion to Withdraw on August 6, 2002, which was granted on September 12, 2002. Then, only Respondent Ortiz appeared at the motion call on December 2, 2002 and Complainant did not appear at the subsequent motion call on January 16, 2003. The respondents were given leave to file a motion to dismiss by no later than January 30, 2003. Separate motions to dismiss were filed by Respondent Ortiz and Respondent Excel on January 17, 2003 and January 22, 2003 respectively. Complainant, acting *pro se*, then filed a response to the motions on February 27, 2003. Subsequently, the motions to dismiss were denied, citing the Commission's ruling in Gable and Vandalia Country & Golf Club, III. H.R.C. Rep. (1999SF0321, June 27, 2001). Gable directs that if a complainant indicates a renewed willingness to prosecute her or his case after a period of inactivity, she should be permitted to do so in that the Commission prefers to dispose of cases on the merits. However, Complainant then did not appear at the next scheduled status hearing on April 10, 2003 and she

did not respond to the order providing that the motions to dismiss were renewed in light of Complainant's failure once again to appear.

Findings of Fact

1. After September 25, 2001, Complainant did not participate in this case except when she filed her response on February 27, 2003 to the motions to dismiss then pending. She failed to appear at scheduled motion calls on November 27, 2001, July 23, 2002, September 12, 2002, December 2, 2002, January 16, 2003 and April 10, 2003, despite being served with the orders setting each of these dates .

2. Notice of each date was sent to Complainant at her address of record and none of this mail was returned undelivered.

3. Complainant did not respond to the renewed motions to dismiss.

4. Complainant has not provided the Commission with a notice of change of address.

Conclusions of Law

1. The Commission has jurisdiction over the parties in this matter.

2. The Commission is authorized to dismiss complaints with prejudice due to "the failure of a party to prosecute his or her case" Illinois Human Rights Act, 775 ILCS 5/8A-102(I)(6).

3. Because Complainant has failed to appear on six occasions when this case appeared on the calendar and has not replied to the renewed motions to dismiss of respondents, there has been a failure "to prosecute his or her case" on the part of Complainant, thereby requiring dismissal of the complaint with prejudice.

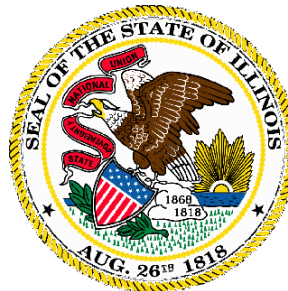
Discussion

It is a fundamental principle governing practice before this Commission that it is the singular responsibility of complainants to diligently pursue the disposition of cases once they are docketed with the Commission. In this case, Complainant has failed to participate in the prosecution of the case by not attending any of the five dates on which the matter was included on the motion call calendar. She was sent proper notice of each date at her last known address. It is recommended that this case now be dismissed because of the failure of Complainant to prosecute her case.

Recommendation

It is recommended that this case be dismissed with prejudice pursuant to the authority granted to the Commission in the Illinois Human Rights Act at 775 ILCS 5/8A-102(D)(6).

HUMAN RIGHTS COMMISSION



ENTERED:

November 13, 2003

BY: _____
DAVID J. BRENT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

Service List for Sierra #11491 as of 11/13/03:

Milagros Sierra
4649 West McLean Avenue
Chicago, Illinois 60635

Scott E. Irvin
Friend, Levinson & Irvin, Ltd.
33 North LaSalle Street
Suite 3200
Chicago, Illinois 60602

Michael R. Collins
Collins & Collins
332 South Michigan Avenue
Suite 605
Chicago, Illinois 60604

Office of the General Counsel
Illinois Department of Human Rights
100 West Randolph Street
Suite 10-100
Chicago, Illinois 60601